

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY PRIETO,

No. C 10-04074 SBA (PR)

Petitioner,

**ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS; AND
DENYING CERTIFICATE OF
APPEALABILITY**

v.

R. GROUNDS, Warden,

Respondent.

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming that his constitutional rights were violated in connection with a decision by the California Board of Parole Hearings (Board) in 2009 denying him parole.

In his petition, Petitioner specifically claims that the Board's 2009 denial does not comport with due process because it is not supported by some evidence demonstrating that he poses a current unreasonable threat to the public. He also claims that conducting his parole hearing under Proposition 9 (Marsy's Law) was a violation of the ex post facto clauses of the state and federal constitutions. Proposition 9, the "Victims' Bill of Rights Act of 2008: Marsy's Law," modified the availability and frequency of parole hearings. Specifically, Marsy's Law provides that the Board will hear each case every fifteen years unless it opts to schedule the next hearing in three, five, seven or ten years. Cal. Penal Code § 3041.5(b)(3) (2010).

In the context of parole, a prisoner subject to a parole statute similar to California's receives adequate process when he is allowed an opportunity to be heard and is provided with a statement of the reasons why parole was denied. Swarthout v. Cooke, No. 10-333, slip op. at 4-5 (U.S. Jan. 24, 2011). The attachments to the petition show Petitioner received at least this amount of process. The Constitution does not require more. Id. at 5.

Whether the Board's decision was supported by some evidence of current dangerousness is irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied." Id. at 6.

Petitioner's ex post facto claim also fails. The Ninth Circuit has recently held that Marsy's Law does not violate the ex post facto clause. See Gillman v. Schwarzenegger, No. 10-15471, slip op. 1339, 1357 (9th Cir., Jan. 24, 2011). Accordingly, the Court finds that Petitioner's allegations do not state a cognizable claim for an ex post facto violation.

For the foregoing reasons, the petition for a writ of habeas corpus is DENIED, and the Court's order to show cause is DISCHARGED. Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability (COA) under 28 U.S.C. § 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals.

The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending motions, and close the file.

IT IS SO ORDERED.

DATED: 2/9/11

SAUNDRA BROWN ARMSTRONG
United States District Judge

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA
5
6

7 JEFFREY PRIETO,

Case Number: CV10-04074 SBA

8 Plaintiff,

CERTIFICATE OF SERVICE

9 v.

10 R GROUNDS et al,

11 Defendant.
12 _____/

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on February 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
17 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19 Jeffrey Prieto E-03367
20 Correctional Trainin Facility - East Dormitory
P.O. Box 689
Soledad, CA 93960-0689

21 Dated: February 11, 2011

22 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
23
24
25
26
27
28